

TRANSCRIPT OF BOND HEARING  
BEFORE THE HONORABLE ROBERT M. LEVY  
UNITED STATES MAGISTRATE JUDGE

11 | APPEARANCES:

12 For the Plaintiff: United States Attorney's Office  
13 Eastern District of New York  
14 JOHN O'DONNELL ENRIGHT, AUSA  
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16 For the Defendant: Federal Defenders of New York,  
Inc.  
17 MICHAEL K. SCHNEIDER, ESQ.  
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18 16th Floor  
Brooklyn, New York 11201  
713-330-1200

Also Present:  
20 Joy van Hasselt, Social worker  
intern for the Federal Defenders  
21 Moise Apolinaris, Defendant's  
Father  
22 Mildred Apolinaris, Defendant's  
Mother

1 Proceedings recorded by electronic sound recording;  
2 transcript produced by transcription service.  
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1 P R O C E E D I N G S

2 THE CLERK: Government calls for bail application,  
3 USA versus Caleb Apolinaris, case number 22-CR-398.

4 Counsel, your name for the record for the  
5 Government.

6 MR. ENRIGHT: Good morning, Your Honor. John  
7 Enright for the United States.

8 THE COURT: Good morning.

9 THE CLERK: For Defendant.

10 MR. SCHNEIDER: Federal Defenders by Michael  
11 Schneider for Mr. Apolinaris, who is present. Also at  
12 counsel table is Joy van Hasselt, a social worker intern with  
13 the Federal Defenders. Good morning.

14 THE COURT: Good morning.

15 THE CLERK: Thank you.

16 THE COURT: You're free to remain seated  
17 (indiscernible).

18 Good morning, Mr. Apolinaris.

19 THE DEFENDANT: Good morning.

20 THE COURT: Okay. I believe it's the Defendant's  
21 application?

22 MR. SCHNEIDER: Yes, Your Honor. We're asking for  
23 the Court to release Mr. Apolinaris on a \$50,000 bond signed  
24 by himself obviously and also his parents who are in the  
25 audience, Mildred and Moises Apolinaris.

1                   Mr. Apolinaris has been at the MDC now for 16  
2 months, as this Court knows.

3                   THE COURT: I'm sorry. For how many months?

4                   MR. SCHNEIDER: Sixteen. His initial appearance in  
5 this court was on August 4th, 2022, so a little over 16 at  
6 this point, I think.

7                   THE COURT: What's anything of note that happened  
8 while he was in pretrial detention, any issues?

9                   MR. SCHNEIDER: I would let Mr. Apolinaris address  
10 that but too many to mention. Acts of violence that he's  
11 witnessed. Stabbings?

12                  THE DEFENDANT: Stabbings, seven --

13                  MR. SCHNEIDER: Seven.

14                  THE DEFENDANT: -- in the last month.

15                  MR. SCHNEIDER: He's been locked down, I would say,  
16 a majority of those 16 months, meaning kept in his cell  
17 except to be let out to eat and sometimes they get cold food  
18 to eat in their cells. And that's just the general situation  
19 at the MDC now.

20                  THE COURT: Any disciplinary issues for him?

21                  MR. SCHNEIDER: Not that I'm aware of.

22                  Any hits?

23                  THE DEFENDANT: No.

24                  MR. SCHNEIDER: No. I mean --

25                  THE DEFENDANT: Kept to my cell.

1                   MR. SCHNEIDER: -- I have been representing Mr.  
2 Apolinaris for quite a while now, I think more than a year.  
3 I took over for one of my colleagues. But I visited him  
4 quite often. He's never been in the SHU when I visited. So  
5 I'm unaware of any disciplinary incidents. As he said, he's  
6 kept to his cell almost entirely.

7                   So I do think the Court could consider those  
8 conditions in considering our application. I think more  
9 importantly is the fact that his parents willing to sign the  
10 bond. I do know we have a pretrial report from more than a  
11 year ago which indicates that they had a strained  
12 relationship at the time. That relationship has been  
13 repaired. His parents are here. They visit him at the MDC  
14 regularly. They --

15                  THE COURT: Is his father employed now?

16                  MR. SCHNEIDER: His father's not employed now, but  
17 he is willing to sign the bond for moral suasion.

18                  But they're at the point, over the months since his  
19 arrest, of coming to understand Caleb's seriousness in  
20 dealing with the case. And they trust him to do what he's  
21 supposed to do should the Court grant this application. So I  
22 believe that obviously warrants consideration by the Court.

23                  I understand this is a presumption case. I think  
24 the presumption is easily overcome just by my client's  
25 background. You know, he's born and raised in Brooklyn.

1 He's lived here his entire life. He's not really a risk of  
2 flight. And any risk of flight, any risk of dangerousness,  
3 it's overcome, not just by his parents agreeing to sign the  
4 bond and ensure his return to court and abidance by the  
5 conditions, but by our proposed conditions which are that he  
6 would be released to an inpatient drug treatment program.

7 Samaritan Village will have a bed for him early next week.  
8 And he would enter that program and the condition of the bond  
9 would be that he'd have to remain in inpatient treatment  
10 until successfully completed. And our understanding is that  
11 that program would take at least six months.

12 So those strict conditions of release, I think,  
13 clearly overcome the presumption and give the Court  
14 confidence that my client will return to court when he's  
15 supposed to and that he won't pose a danger. And I will say  
16 this, I think when he was arrested, as you've read in the  
17 pretrial report, you know, he was addicted to heroin, he was  
18 using opioids every day. And in that situation, perhaps  
19 release would not have been warranted. But he's not in that  
20 situation anymore. We're 16 months removed from that. He's  
21 committed to living a sober life. And at the drug program he  
22 will necessarily have to. He will be drug tested as well as  
23 just being in a secure place where contraband is not easily  
24 found.

25 So the fact that his parents trust him enough to

1 sign this bond --

2 THE COURT: I'm sorry. Where contraband is not  
3 easily found, which place is this?

4 MR. SCHNEIDER: Samaritan Village.

5 THE COURT: Okay.

6 MR. SCHNEIDER: I understand people use drugs at  
7 Samaritan Village, and I've had people do that. But it's not  
8 something that -- it's something that somebody has to seek  
9 out. It's not as if I'm saying let Mr. Apolinaris out --

10 THE COURT: Yeah. I think --

11 MR. SCHNEIDER: -- onto the street, you know, where  
12 temptations will be different.

13 THE COURT: My other concern that perhaps is not as  
14 great a concern now but I think, Mr. Apolinaris, you  
15 voluntarily left a detox program before the arrest. And I  
16 know why people leave detox programs, you know, it's painful.  
17 But that's part of your record as well. Why should I believe  
18 that you will remain in that program for six months when you  
19 haven't been able to in the past? What's changed?

20 MR. SCHNEIDER: Is that directed to me or Mr.  
21 Apolinaris?

22 THE COURT: Whoever wants to answer that question.

23 MR. SCHNEIDER: Well, I --

24 THE DEFENDANT: (Indiscernible).

25 MR. SCHNEIDER: Right. I'll answer the question,

1 and I'll let Mr. Apolinaris chime in if he wants to. He was  
2 a heroin addict and, as the Court is aware, like, you leave a  
3 detox program because you can't handle detoxing. But we're  
4 16 months from that. So he has detoxed, meaning he's not  
5 going to have those same urges. Not that he doesn't need  
6 rehabilitative treatment, which is why we're suggesting  
7 Samaritan Village would treat, sort of, underlying issues  
8 about his drug use. But we're not in a situation where he's  
9 going to be in withdrawal.

10           And you could trust him, I think, because he wants  
11 to do this. And this is not an off-the-cuff application that  
12 we've made. He's been in detention for 16 months. We've had  
13 these discussions -- I've had these discussions with him, and  
14 he feels ready to do this. And he knows it's a challenge,  
15 but he's committed to doing it. And I will say this, he  
16 understands the consequence of not completing the program is  
17 going back to, I mean, what are we going to say, like, one of  
18 the worst detention facilities certainly in the state. I  
19 mean, the punitive nature of confinement at the MDC is  
20 terrible, but it also, in this case, gives Mr. Apolinaris a  
21 great motivation not to mess up in the program because he  
22 knows where he'll go if he does.

23           THE COURT: You know, I'm not a mind reader. I  
24 don't have a crystal ball. There's no way for me to read  
25 your mind and see whether you've flipped a switch and are

1 ready to change and be committed to a drug-free life. I'm  
2 sure you understand that if you were released and you did go  
3 to Samaritan Village and then you left, you'd be  
4 automatically remanded and that probably would affect your  
5 sentence if you're convicted in this case. So you have a lot  
6 at stake by wanting to do this.

7 THE DEFENDANT: Yes.

8 THE COURT: So what's changed? I mean, I don't  
9 want you to talk about guilt or innocence, but what's changed  
10 about your relationship to drugs?

11 THE DEFENDANT: When I first came to -- to MDC, I  
12 didn't think I was capable of changing or capable of  
13 improving. But in the last 16 months, I have completed five  
14 courses of the Change (indiscernible) Me program, it's a --  
15 it's a booklet where you get certificates for it. I've  
16 completed five of those. I have successfully tapered off of  
17 (indiscernible) program.

18 My motivation is just, what I was doing in my past,  
19 it wasn't conducive. It wasn't -- it wasn't -- it wasn't  
20 good for my life. And I have children that I need to be a  
21 role model to. And I'm not saying that I'm not being  
22 rehabilitated where I am, but I do need extra help. I do  
23 need more of a rehabilitation process, rather than prison.  
24 I'm coming from doing four bundles a day. That's a lot of  
25 heroin to -- wanting to change my life so badly that I -- I

1 didn't want to put in a bail application until I felt as  
2 though I was ready to actually make this change and follow  
3 down this course. And I feel as though I am.

4 THE COURT: Thank you.

5 Anything else?

6 MR. SCHNEIDER: I just want to make it clear that  
7 if the Court was to grant the application, we would ask it to  
8 be stayed and for Mr. Apolinaris to come back on Monday --

9 THE COURT: When there's a bed.

10 MR. SCHNEIDER: -- to be released. When there's a  
11 bed. But also because there's apparently a criminal court  
12 warrant that the Government has indicated in their letter and  
13 I'd feel more at ease if my client was released early in a  
14 week. So if he is taken to criminal court, I'm sure he'll be  
15 released there, he'd still have time to go to Samaritan  
16 Village. Even if he was held overnight there, he could go on  
17 Tuesday once there's a bed available. I wouldn't want that  
18 to happen on a Thursday or Friday and there be a weekend  
19 looming. So we would ask that -- if our request is granted,  
20 that he be brought back Monday for the order to be issued.  
21 And if he's taken to criminal court, we'll arrange for him to  
22 get to Samaritan Village after his appearance there.

23 THE COURT: Is location monitoring permitted in  
24 Samaritan Village?

25 MR. SCHNEIDER: I'm unaware of that. I've never

1 had somebody there. But if that's a concern of the Court, we  
2 can reach out and report on Monday, if it's possible, for  
3 location monitoring and a pretrial can set him up. We have  
4 no objection to that.

5 THE COURT: Because one of my concerns would be,  
6 I'm assuming that your commitment would be strong --

7 THE DEFENDANT: Very.

8 THE COURT: -- but there are temptations. And I  
9 would want to know, if I were to even entertained this, when  
10 you left, if you left the program. Because that would be a  
11 bright line that you can't cross.

12 THE DEFENDANT: I would not cross that line.

13 MR. SCHNEIDER: As I said, Your Honor, I understand  
14 the Court's concern. You know, lots of things can happen in  
15 inpatient programs, as we're all aware through our  
16 experience. My client is committed. But I have discussed  
17 this with him quite a bit. And he understands, if something  
18 was to happen in the program and he felt forced to leave or  
19 he was asked to leave, he understands that he would come  
20 straight to court. Like, I really don't think that flight is  
21 a risk here. He's never really left Brooklyn. It's not the  
22 sort of case -- of course there's dangers of somebody with a  
23 history of addiction not doing the right thing, but not  
24 appearing in court I don't think is one of those in this  
25 case.

1                   THE COURT: I see a pretrial services officer had a  
2 response.

3                   PRETRIAL SERVICES OFFICER: I conferred with a  
4 substance abuse specialist and he stated that inpatient  
5 monitoring is allowed.

6                   THE COURT: Is allowed.

7                   PRETRIAL SERVICES OFFICER: Is allowed.

8                   THE COURT: Okay. All right. I'm less concerned  
9 about risk of flight. I'm more concerned about risk of  
10 leaving the program and not coming back. But, you know,  
11 people change. They can change. They can overcome their  
12 substance abuse. I've had many people in my reentry court  
13 who have done that. And what's critical before that happens  
14 is they have to say, I'm going to do it -- not I'm going to  
15 try to do it, but I'm going to do it, and I will do it. And  
16 if that's what I hear you're saying, then I'll listen to that  
17 with open ears and an objective mind and hear with the  
18 Government has to say. So are you totally committed to --

19                   THE DEFENDANT: Yes.

20                   THE COURT: -- staying there no matter what --

21                   THE DEFENDANT: Yes.

22                   THE COURT: -- even if it's difficult and not a  
23 place you want to be?

24                   THE DEFENDANT: Yes.

25                   THE COURT: And even if you think their rules are

1 stupid?

2 THE DEFENDANT: I have to follow them.

3 THE COURT: Okay.

4 Anyway. Let me hear from the Government.

5 MR. ENRIGHT: Thank you, Your Honor. I'd like to  
6 just make a few points. First, as has already been stated  
7 but to be clear, this is a Fentanyl fatal overdose --

8 THE COURT: Right.

9 MR. ENRIGHT: -- prosecution. It's thus a  
10 presumption case. And I'd like to just start by putting into  
11 context the length of the Defendant's amount of time in the  
12 MDC against the sentencing exposure he faces if, in fact,  
13 convicted, Your Honor. And with respect to that, I will say  
14 that we've been before Judge Brodie for those 16 months. I  
15 would advise the Court that we are in and have been in plea  
16 discussions that I would characterize as advanced. If we're  
17 unable to reach a plea, I believe at our last status  
18 conference before Judge Brodie, the expectation is that we  
19 would, in fact, set a trial date at our next status  
20 conference.

21 As to the Defendant's guidelines exposure, in light  
22 of the distribution of Fentanyl that resulted in the death of  
23 a young victim, Your Honor, the Defendant's guidelines range  
24 is 235 to 293 months without any reduction for acceptance of  
25 responsibility. So the 16 months that have been served in

1 the MDC are absolutely dwarfed by that potential guidelines  
2 range. And I obviously make that point, Your Honor, because  
3 it serves as, in the Government's view, a very real motive  
4 for the Defendant, if released, to flee.

5 Again, this is a presumption case. The Defense  
6 proffers essentially two grounds to rebut that presumption  
7 and alternatively to each in turn, Your Honor. The first is  
8 the Defendant's ties to New York and his family. The  
9 Government does not dispute that the Defendant, as we  
10 understand it, is a lifelong New Yorker. What the Government  
11 does want to argue to Your Honor as we set forth in our  
12 submission and as Defense Counsel eluded, at the time of his  
13 arrest, the Defendant told pretrial services that he had no -  
14 or, excuse me, limited or occasional contact with family  
15 members including his mother. My understanding is that  
16 pretrial services interviewed his mother at the time of the  
17 Defendant's arrest. His mother at that time was not willing  
18 to, as I recall, act as a sureter on any proposed bond and,  
19 in fact, informed pretrial services that she believed that  
20 the Defendant would not return to court if released and  
21 without treatment.

22 THE COURT: Without treatment.

23 MR. ENRIGHT: Without treatment. Now, Your Honor,  
24 I make that point simply because we are now 16 months. My  
25 understanding, and I have not heard Defense to claim that

1 there is any need for detox, that what is being proposed is  
2 long-term treatment for historical substance abuse. The  
3 Defendant's proffered ties to his family, again, there was no  
4 mention of his father at the time of his arrest. What the  
5 Defendant is now proposing, obviously, is to assure there is  
6 a mother who, at least at the time of the arrest, had  
7 occasional contact with the Defendant and the Defendant had  
8 no other familial ties.

9 His ties to what I understand to be his two  
10 children, the mother of those children dovetails with the  
11 Defendant's second argument that there's no history of  
12 criminal convictions which, in the Defendant's view, you  
13 know, supports the notion that he's not a danger or a risk of  
14 flight. The Government disagrees, Your Honor.

15 We don't dispute that there are no criminal  
16 convictions that we can report to Your Honor. However, what  
17 I can proffer to Your Honor is frankly a life of lawless  
18 conduct. The Government's investigation has revealed that  
19 the Defendant -- his history of narcotics distribution is not  
20 limited, of course, to the victim in this case. Rather he  
21 was a drug dealer who historically dealt heroin, other  
22 narcotics.

23 As for his interactions with law enforcement, as  
24 Defense eluded, he was arrested on State charges in June of  
25 2021 -- so approximately a year prior to his arrest -- for

1 possession of a controlled substance and, more disturbing,  
2 Your Honor, charges of endangerment of the welfare of a  
3 child. I can proffer to Your Honor that that charge stems  
4 from the Defendant's alleged locking of his two children in a  
5 car for a period of time -- I believe, Your Honor, it was a  
6 period of hours. In connection with that State prosecution,  
7 two bench warrants were issued, one in April of 2022 that was  
8 then extinguished, but a second bench warrant was issued in  
9 May of 2022. My understanding, as reported by pretrial  
10 services, is that bench warrant was nonexpiring; it's thus  
11 live, as Defense Counsel has eluded to.

12 So the lack of any criminal convictions, Your  
13 Honor, I would submit does not present a full accurate  
14 picture of the Defendant's criminal history. To the extent,  
15 Your Honor -- and let me just pause and say that for those  
16 reasons, you know, the proffer basis that the presumption of  
17 the continued detention has been rebutted here, the  
18 Government would submit, has absolutely failed.

19 Even if Your Honor were to entertain releasing the  
20 Defendant, you know, the proposed package of a \$50,000 bond  
21 secured by his parents is, in the Government's view, wholly  
22 inadequate. Again, I've proffered to Your Honor what was  
23 told to pretrial services at the time of arrest as to the  
24 Defendant's familial ties. My understanding, I believe the  
25 Defense has confirmed, that the father is unemployed, is

1 presently without income. My understanding is that the  
2 second sureter, his mother, has an annual income of  
3 approximately \$60,000.

4 In light of his limited contact with family prior  
5 to his arrest, Your Honor, I would respectfully submit that  
6 he has very little to lose in terms of incentive to flee, to  
7 present a continued danger to the community. \$50,000,  
8 although for a sureter with a \$60,000 income, I understand  
9 that's a significant sum of money; but in light of his  
10 relationship with these proposed sureters, historically, Your  
11 Honor, and in light of the very substantial potential  
12 sentence he faces if convicted, he has little to lose. And I  
13 would submit to Your Honor that, you know, any moral suasion  
14 here, if not entirely absent, is exceptionally limited.

15 Unless Your Honor has any questions, I will pause.

16 THE COURT: Go ahead.

17 MR. ENRIGHT: I have no further argument at this  
18 time. The only other point I'd like to make to Your Honor,  
19 family members of the victim are in attendance today, Your  
20 Honor. If Your Honor would like to hear from one or both of  
21 them, I know that at least one of them is prepared to make a  
22 statement in opposition to the Defendant's application.

23 THE COURT: Okay. I do need to hear from both  
24 sureters.

25 So the questions, the danger to the community, what

1 is it specifically that the Government fears will happen? I  
2 understand the risk of flight and why you believe there is a  
3 risk of flight. I think I understand why you think there may  
4 be a danger, but I'd like to hear.

5 MR. ENRIGHT: Yeah. The immediate danger, Your  
6 Honor, is that when last left in the community, the  
7 Defendant's conduct is alleged to have caused the death of a  
8 25-year-old. The Defendant does not have, to the best of the  
9 Government's knowledge, a work history, a strong familial  
10 structure to turn to, to rely on for financial support, et  
11 cetera. The concern, to put it more bluntly, Your Honor, is  
12 that the Defendant flees Good Samaritan [sic]. Best case  
13 scenario, he does not turn back to dealing drugs, including  
14 Fentanyl. But the risk being that he does and that there's  
15 further damage inflicted up to and including causing the  
16 death of another. So that's the danger. In the Government's  
17 view, it's very real, Your Honor.

18 THE COURT: All right. Could I hear from the  
19 sureters?

20 MR. SCHNEIDER: Yes. Can I have you step up here?

21 THE CLERK: To the podium, please. I guess, Mr.  
22 and Mrs. Apolinaris.

23 THE COURT: Good afternoon, ma'am, sir. Thank you  
24 for coming in. You'll be placed under oath and then I'll  
25 have some questions to ask you.

1                   THE CLERK: Okay. Let me just swear you both to  
2 answers you're about to give to Judge Levy. Please raise  
3 your right hand.

4                   MOISES APOLINARIS, WITNESS, sworn

5                   MILDRED APOLINARIS, WITNESS, sworn

6                   THE CLERK: Sir, can you please state your name for  
7 the record?

8                   MR. M. APOLINARIS: Moises Apolinaris.

9                   THE CLERK: Thank you.

10                  Ma'am, your name for the record?

11                  MS. APOLINARIS: Mildred Apolinaris.

12                  THE CLERK: Thank you very much.

13                  Okay. Judge Levy.

14                  THE COURT: So could I hear from each of you how  
15 you feel about this bail package and about signing a bond.  
16 Whoever would like to go first.

17                  MR. M. APOLINARIS: Well, first after what I just  
18 heard --

19                  THE COURT: Excuse me. Would you like to sit down?

20                  MS. APOLINARIS: Yes. I have back problems.

21                  THE COURT: Yes. Why don't we get a chair for you.

22                  MR. M. APOLINARIS: It's interesting to me how  
23 someone can come up with conclusions off of a piece of paper  
24 and history that -- that they have no idea what they're  
25 talking about. I had a strained relationship with my son

1 because he's a drug addict from very young. My son's not a  
2 killer. He's not a murderer. He did many things. And -- and  
3 distribution charge, yeah, absolutely.

4 The enemy in this courtroom is not him. The  
5 enemy's still out there. He's not the one that had that  
6 young man killed. And I'm sorry. I'm sorry. I really am.  
7 Believe me, it hurts. Because he has died himself from the  
8 drug addiction. The enemy is drug use. The enemy is the  
9 drug addiction. And that's what had him in the state that he  
10 was in.

11 You know what it is to chase somebody and then have  
12 them reject you because they're constantly high. You don't  
13 know if they're dead or alive because they won't call you.  
14 And this is -- this is -- the reason why I'm here is because  
15 I love my son. He's my son no matter what. So I don't give  
16 a crap what a piece of paper says -- I'm sorry, Your Honor --  
17 I don't care what you think happened. I know what happened.  
18 I know that young -- that young man's life -- I know what he  
19 went through and what we went through. To hear that he's in  
20 a -- that he's in a trap house dead -- dead from drug  
21 overdose. To know that the young man that perished, Lord,  
22 used with him -- used with him. Addicts.

23 As parents -- you know what we go through as  
24 parents? To think that it's our fault. We look in the  
25 mirror and we think, what -- what the hell did we do wrong?

1 After we've chased them, after we've loved them, after we've  
2 been there for him, the whole damn thing, none of it matters.  
3 It's not the dealer. Because you're going to go to somebody  
4 else. There's nothing you could do.

5 So the fact that he wants to go to drug rehab -- to  
6 get him to go to drug rehab, do you know how difficult that  
7 is? And maybe -- maybe it's the 16 months that they kept him  
8 in there because they wouldn't do a damn thing about it --  
9 okay -- to -- to drag this thing along while he's been  
10 threatened -- okay -- while he's had to face many things in  
11 that cell including insanity. Maybe that's part of the plan  
12 too. To break him.

13 This ain't no act. This is a father. This is a  
14 father. And I understand you got to do a job. Everybody got  
15 to do -- everybody got to play their part here. And that's  
16 what I'm doing here. I'm putting my name on the piece of  
17 paper --

18 UNIDENTIFIED VOICE: Mr. Moises --

19 MR. M. APOLINARIS: Sorry. Yeah. Okay. Yes.  
20 Absolutely. Absolutely.

21 UNIDENTIFIED VOICE: You can't be doing that.

22 MR. M. APOLINARIS: Absolutely. I'm sorry. I'm  
23 sorry. I'm sorry. But I'm going to put my name down on the  
24 piece of paper for my son, and so is she. We've been there  
25 for the duration, through the hits and everything else.

1 We'll be there for the rest. No matter how -- he's got to do  
2 time. He's got to do time. But if he can get some --  
3 some -- some time to actually get into a program where  
4 something is going to help him, some tools -- they're going  
5 to give him some tools to help him, so that when he gets out,  
6 he'll be a better man maybe. That's all we're asking for.

7 You want to say something?

8 THE COURT: Thank you.

9 MR. M. APOLINARIS: I'm sorry for getting the way I  
10 got. It's just been -- this has been a long, long thing  
11 happening.

12 THE COURT: I hear what you're saying.

13 Ma'am?

14 MR. M. APOLINARIS: She doesn't want -- she doesn't  
15 want to say nothing.

16 MS. APOLINARIS: I'm going to get so emotional. I  
17 love my son. And the fact -- when he read that I would not  
18 do anything to help him in his rehab or help him with bond is  
19 not true. Because I did speak with a couple of people. I  
20 said, if this program is not going to help him, I'm not going  
21 to go with it. If there's something that he wants to do and  
22 he truly wants to do, I will support him. I have supported  
23 him all his life.

24 The reason why we've been estranged is because he  
25 refuses to reach out to us when we reach out to him. Just

1 like Moises said, he's rejected us time and time and time  
2 again and it's all because of the drug abuse. I tell Caleb,  
3 I love him no matter what. We will always stand by him, no  
4 matter what. Even when he rejects us. Even when he says  
5 lies about us. But that was all due to his drug addiction.

6 Yeah. Maybe these 16 months have really made him  
7 reflect on what life is, what freedom is, because this is  
8 what we talk about on the phone. And I know he doesn't want  
9 to hear what I have to say. I say, you have time, no pun  
10 intended. All you have time right now is to reflect on the  
11 past, the life you've led, and where it's led you to. You  
12 have children to think about. Right now is you and the Lord  
13 helping you through this. And he knows how much we love him.  
14 There's nothing that we wouldn't do for him. So estrangement  
15 yes, because of him not because of us. We've always seeked  
16 him out.

17 And if this program is something that he really  
18 truly wants to do and he's ready for it, well, then praise  
19 the Lord. Because it's been a very difficult time throughout  
20 the years that we've been with him. And he can tell you how  
21 many drug rehab places I have called to place him in. He's  
22 been interviewed for many of them, and he's never chosen to  
23 go to them because the addiction was so strong. He was not  
24 strong enough to do those programs. And I think that now,  
25 with these 16 months, reality has set in on what life is

1 without freedom.

2               Yeah. Time. He's going to have to do time. We're  
3 aware of that. We are aware of that. And if this program is  
4 going to help him not just with the fact that he needs to  
5 rehabilitate -- rehabilitation is not just the drug use, it's  
6 the mental aspect behind it. How do you deal with the  
7 pressures that are presented before you? Are you mentally  
8 strong to say, I will not do this because these actions have  
9 caused me to be in this facility and not even be there for  
10 his two daughters, which I know that he adores? And,  
11 unfortunately, because of his drug addiction, he did put them  
12 in danger. He did put them in danger. And I know that he is  
13 guilty. And I know that he feels horrible for that. But  
14 that's nothing that we can do. That's something that he  
15 would have to deal with.

16               So if -- if this is granted, then I am happy for it  
17 because I know that he's ready for it. And that -- that is  
18 all I have to say.

19               THE COURT: Have you noticed any change in him over  
20 the last 16 months?

21               MS. APOLINARIS: Yes. I have noticed that his  
22 mentality has changed, wanting to change, missing out on  
23 being with his daughters. Now he's been able to speak to the  
24 older one because they have -- they're two different mothers.  
25 She's been giving him the privilege to call the house to

1 speak with her because I know she asks for him. And when we  
2 have her -- both the girls on the weekends, you know, when he  
3 calls, he talks to them.

4 MR. M. APOLINARIS: There's more the sense of --  
5 the term is consequential thinking --

6 MS. APOLINARIS: Yeah.

7 MR. M. APOLINARIS: -- you know, a -- a -- a better  
8 awareness that I've noticed. Because in the past when we've  
9 spoken to him he's -- he's been more reactionary than  
10 anything else. Now it's more, let me think about what I'm  
11 going to do. Which probably led him to this decision  
12 because, you know, he was -- he was -- he kept talking about  
13 how he was scared he wasn't going to make it, you know -- you  
14 know, in the program. And he finally decided, this is  
15 something I've got to do, you know.

16 It's not -- it -- it's easy to say, you know, it's  
17 just to get out of this place. But the thing is that when  
18 you're in this place, you develop a certain mentality and a  
19 certain armor that you -- that you walk around with. And  
20 there's a certain system that you're used to. So it's --  
21 it's -- I consider it a -- a very courageous thing for him to  
22 do to step out of that environment that he's been used to,  
23 constantly watching over his back and everything else. It's  
24 not like anything you and I know out here. To step into  
25 something new where, as I understand it, the place is -- is

1 maybe just as dangerous, but at least, like I said, they're  
2 giving him tools so that he can use later on, you know. And  
3 that's -- that's where the discussions have been. So that's  
4 the change we've seen, you know.

5 THE COURT: Thank you.

6 Any questions from the Government or the Defense?

7 MR. SCHNEIDER: Not from the Defense.

8 MR. ENRIGHT: No questions, Your Honor. I would,  
9 again, just note that family members of the victim are  
10 present. And I'm happy to pause and inquire with them or if  
11 Your Honor would want to hear from them. Or if unnecessary,  
12 Your Honor -- if Your Honor were to conclude it's  
13 unnecessary, I'll just --

14 THE COURT: First of all, I'd like to speak to them  
15 and whether they wish to be heard.

16 MR. ENRIGHT: May I, Your Honor?

17 THE COURT: Yes, of course.

18 You may take your seats. Thank you.

19 MR. ENRIGHT: I understand that one or both would  
20 like to be heard, Your Honor.

21 THE COURT: Okay.

22 MS. FALLON: Hello, Your Honor.

23 THE COURT: Good afternoon.

24 MS. FALLON: Good afternoon. I'd like to introduce  
25 myself. My name is Serena Fallon. I am the mother of the

1 young man who passed away from Fentanyl that the Defendant is  
2 alleged to have sold to him. I listened to the Apolinaris  
3 family, and I didn't hear any sorrow or apology towards the  
4 death of my son. They feel he's blameless. My son did not  
5 come to you for Fentanyl -- for pure Fentanyl, and that's  
6 what you gave him, and you killed him.

7                 My son struggled with drug addiction too. But  
8 unlike the Apolinaris family, Doug and I never left his side.  
9 We were with him. We put him in 20 treatment programs. And  
10 I know how easy it is, as you said, Your Honor, to walk out  
11 of a treatment program. And that is my fear. Because I've  
12 looked in the face of my son when he was struggling with his  
13 addiction, and I know what it looks like when those cravings  
14 are hit. And I don't see it here. I see a young man who's  
15 smiling, laughing, his legs aren't shaking. He doesn't look  
16 like he's craving anything but a get out of MDC card. And --  
17 and I really hope that nobody in this courtroom's fooled by  
18 that.

19                 So if he is struggling with addiction and he has  
20 been in the Federal Bureau of Prisons for the last 16 months,  
21 why hasn't he asked for treatment? The Federal Bureau of  
22 Prisons has the best treatment of any prison system. They  
23 have a substance abuse program for inmates in their custody  
24 and care. They have a program called the residential drug  
25 abuse program. It allows these inmates to live in a separate

1 unit from the general population. He can participate in a  
2 full day for nine months of drug rehabilitation.  
3 Additionally, the Federal Bureau of Prisons has excellent  
4 medical and pharmaceutical care if the Defendant needs  
5 something to help him with his cravings. They can give him  
6 Suboxone, they can give him methadone, they can give him  
7 Vivitrol.

8 I haven't heard -- I've come to every single one of  
9 the status hearings. In 16 months I haven't heard him ask  
10 for treatment. Not once. So whether or not -- whatever this  
11 issue is -- and we've all decided today it's not a detox  
12 issue, that it's a psychological one perhaps where he's  
13 craving or he wants to be completely abstinent, the Federal  
14 Bureau of Prisons can handle it.

15 As the mother of an addict, I used to pray he would  
16 get arrested because the only place to get true treatment and  
17 the people who succeed are the ones who get it in the prison.  
18 I have put my son, like I said, in more than 20 programs.  
19 When it got hard, just as you said, Your Honor, he walked  
20 out. It's this easy to walk out. He can hit a door. He can  
21 say something to another resident or patient there and  
22 immediately he's discharged. So he can be in and out in a  
23 day.

24 Obviously, I strongly object to him being released  
25 into the general public to live in an outpatient drug rehab

1 center when the F -- when the Federal -- Federal Bureau of  
2 Prisons can adequately meet his needs. A community-based  
3 program, even one that he would live in, cannot hold him if  
4 he chooses to leave. He'll be gone. He can walk in and walk  
5 out. I've seen it. I've lived it.

6 So you, Your Honor, you have the ability to offer  
7 this Defendant the treatment he wants, but you can do it  
8 within the Federal Bureau of Prisons if he really wants it.  
9 You can -- and that would also respect the wishes of the  
10 grand jury who felt that there was sufficient probable cause  
11 to require a trial because there was a death. Even though  
12 the Apolinaris family doesn't recognize that their son killed  
13 our son.

14 MR. M. APOLINARIS: He didn't.

15 MS. FALLON: He absolutely did. Because you can  
16 see your son. You can touch him. You can hold him. You  
17 know where I see my son --

18 THE COURT: Excuse me. I think we need to be less  
19 personal at this point.

20 MS. FALLON: To see my son, I have to go to the  
21 cemetery and I get to touch a stone wall and talk to him  
22 there. So there is a difference about what's going on here.  
23 They might have both been drug addicts, but one killed the  
24 other. And so I can't have hope for my son. I can't see the  
25 change in my son because that was taken away from me. I will

1 never see my son marry. I won't have granddaughters. I  
2 won't have any grandchildren. I won't have anything. What I  
3 have is my 25-year-old son rotting away. Their son's alive  
4 and well. And he looks very well. He looks healthy and fit  
5 and very different from the 16 months when he came in here.  
6 So jail, it looks like it's been wonderful for him.

7                   So I ask you, Your Honor, please, please, you want  
8 to give him treatment, do it in the FBP. It's possible to do  
9 it there. \$50,000, the father has no job, she's -- she'll  
10 get stuck paying it if he walks away. Who's going to find  
11 him? He's already shown he has no regard. He didn't have  
12 regard for his children. He didn't have regard for his  
13 parents. Whatever was going on with us and our son, he was  
14 with us. We were with him. We were in the weeds of. There  
15 was no estrangement. We were there. We were there beginning  
16 to end, in between.

17                   So, please, I'm asking you to not give him bond or  
18 bail to go to an outpatient facility that he can walk out of.  
19 You can -- you can give him the treatment here if the  
20 treatment is what they want. Please, Your Honor.

21                   THE COURT: All right. Thank you.

22                   MR. FALLON: I don't think I have anything else to  
23 add.

24                   MS. FALLON: Thank you.

25                   MR. FALLON: Thank you.

1                   THE COURT: Okay. Anything else, Mr. Schneider?

2                   MR. SCHNEIDER: Yes. Just briefly, Your Honor, I'd  
3 like to address the Government's first point. We are in plea  
4 negotiations. And, in fact, just earlier this week I  
5 received a proposed plea agreement from the Government which  
6 would have the parties agree that a sentence in a guideline  
7 range of 135 to 160-something months is appropriate.

8 Obviously, that's quite a discount from a 20-year mandatory  
9 minimum. My client knows that. And he knows that if he  
10 messes up on bond perhaps either that agreement goes away or  
11 when he's sentenced, Judge Brodie will take into account what  
12 he's been doing pretrial. So the Government's argument about  
13 the severity of the guidelines here I think cuts against  
14 them.

15                  Mr. Apolinaris knows, and as his parents said,  
16 everybody expects he's going to get a sentence in this case  
17 more than 16 months. Like, we're not asking for him to go to  
18 drug treatment and then expecting him to get time served  
19 after that. I think everybody, at least on this side of the  
20 table, understands he's going to get a significant sentence  
21 here. And that, I think, is just one more reason to believe  
22 that he will abide by the terms of the bond including the  
23 inpatient treatment.

24                  And I don't want to take issue with the parents of  
25 the deceased here. Obviously that's a horrible situation.

1 But he can't get treatment in the MDC. You and I know that.  
2 The RDAP program discussed here is only available to  
3 sentenced prison. There's no such thing like that at the  
4 MDC. My client got all the treatment there was which was  
5 methadone when he first went in, which he's now off of. So  
6 as long as he's at the MDC, he's not getting any treatment  
7 aside from the workbooks he told you, which aren't really  
8 drug rehabilitation, that's more, you know, life skills  
9 training. So if drug abuse addiction is the issue here, and  
10 I think it is, I think the bond we've asked for is  
11 appropriate in this case.

12 And it's true, obviously -- it's obviously true and  
13 the Court knows it's true that Mr. Apolinaris could go to  
14 Samaritan Village on Monday and he could walk out on Tuesday.  
15 I assume he'll have an anklet on which will tell the marshals  
16 where to pick him up. But even if he didn't, there's no  
17 chance that he would flee and if he did that he wouldn't be  
18 found within a week. This is a kid who's lived in Brooklyn  
19 his whole life. He has no place to go. He understand that.  
20 He understands this is his chance, not only to get clean, but  
21 to at least present himself to the Judge at the time of  
22 sentencing as somebody who she doesn't have to worry about  
23 being an addict in the future. So those are all reasons, I  
24 think, to grant our application.

25 THE COURT: Anything else the Government would like

1 to say.

2 MR. ENRIGHT: Your Honor, I would just, very  
3 briefly, just want to bring us back to what Your Honor  
4 frankly already knows, that this is a presumption case. The  
5 proper grounds for rebutting that presumption are wholly  
6 inadequate for the reasons previously stated. Nothing  
7 further, Your Honor.

8 THE COURT: All right. I'm going to reserve  
9 decision. I need to think about this. But it's absolutely  
10 clear that what happened here was a tragedy. And it's a  
11 tragedy obviously for the parents of the victim and a tragedy  
12 for, I think, everyone here in this courtroom. And what we  
13 need to do is look at what the law requires and what will do  
14 less harm and hopefully more good moving forward.

15 The plea agreement, is that issue going to be  
16 resolved shortly or you're not sure?

17 MR. ENRIGHT: It may be.

18 MR. SCHNEIDER: It may be. I don't know when. I  
19 mean, there's a date on the plea agreement of later in  
20 February. But I just got it. I've only had limited time to  
21 discuss it with my client. So certainly not before I think  
22 we would want to come back and have this bail issue settled.

23 My client's mother does work. She has to take off  
24 work every day to come to court. So if the Court is going to  
25 reserve, would it be possible to take her signature today on

1 a \$50,000 bond in case the judge was to grant it so that she  
2 wouldn't have to take off work?

3 THE COURT: On a hypothetical bond?

4 MR. SCHNEIDER: Well, I mean obviously you have to  
5 inform her of the conditions. So, I mean, I'm just trying to  
6 avoid her having a problem at work since she did take today  
7 off.

8 THE COURT: If the bond amount were deemed to be  
9 too small --

10 MR. SCHNEIDER: I believe that they would be  
11 willing to sign it. I propose \$50,000 because, honestly, I  
12 don't think the amount of the bond here is a deciding factor.  
13 My client is not going to run away or commit new crimes, not  
14 because of the amount of the bond. You could make it 100,  
15 \$150,000. He understands \$50,000 would bankrupt his parents.  
16 But it's really the trust that they put in him, that he  
17 reciprocates, and the nature of the conditions we propose, I  
18 think, that give the Court confidence that he'll abide by the  
19 conditions of the law. But certainly, I think they would  
20 sign a bond of a higher amount. It's just, I did not think  
21 that was a factor necessarily.

22 THE COURT: Right. Well, if you wrote a  
23 hypothetical bond, if I were even to consider it, it would  
24 have be higher.

25 MR. SCHNEIDER: Okay. Can she appear by phone at

1 the next appearance?

2 UNIDENTIFIED VOICE: Yeah.

3 THE COURT: Absolutely.

4 MR. SCHNEIDER: Okay. I think we could work that  
5 out then.

6 THE COURT: Okay.

7 All right. So I'm going to reserve decision at  
8 this point.

9 MR. SCHNEIDER: Are we going to schedule another  
10 date, I just --

11 THE COURT: I might just issue a ruling before  
12 that. I'm not sure. But obviously if the ruling were that  
13 he's to be released on bond, you would have to be produced.

14 MR. SCHNEIDER: Right. Okay. Well, we'll wait --

15 THE COURT: If not, then he remains where he is.

16 MR. SCHNEIDER: -- for the Court's decision and  
17 then we'll arrange with Samaritan Village and see if they  
18 have a bed at that point.

19 THE COURT: Okay.

20 All right. Anything else?

21 MR. ENRIGHT: No, Your Honor.

22 THE COURT: Okay.

23 (Proceedings adjourned at 12:27 p.m.)

24

25

1 TRANSSCRIBER'S CERTIFICATE

2 I certify that the foregoing is a correct  
3 transcript from the electronic sound recording of the  
4 proceedings in the above-entitled matter.

5

6 February 6, 2024

7 *Tracey Hamilton*

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9 Tracey Hamilton

DATE

10 Legal Transcriber

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